

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**HAMMOND LODGE 570
LOYAL ORDER OF MOOSE, INC.
DOCKET NO. 29-2004-0036**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND PROPOSED DEPARTMENTAL ORDER**

An administrative hearing was held on Tuesday, March 16, 2004 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Hammond Lodge #570, was represented by Gregory Francis, David Coppage, and Norman Chumley. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Departmental Order.

REASON FOR HEARING

On January 5, 2004, the Petitioner's charity gaming license was suspended for two (2) years, and Petitioner was assessed civil penalties in the amount of seven thousand dollars (\$7,000). The Petitioner protested in a timely manner.

FINDINGS OF FACTS

- 1) The Indiana Department of Revenue Criminal Investigation Division conducted an investigation of the Petitioner beginning in August of 2003. (Record at 9).
- 2) The Department's investigator observed minors participating in Petitioner's gaming activity. (Record at 11).
- 3) Petitioner allowed an individual identified on their license as a worker to call bingo. (Record at 13).
- 4) Petitioner allowed Glenda Holloway to act as an operator without having been a member of Petitioner's organization for requisite amount of time. (Record at 13).

- 5) Petitioner signed a lease agreement with the Lake County Board of Commissioners to lease space at the Lake County Fairground to conduct charity gaming from August 7 to August 9, 2003. (State's Exhibit D).
- 6) Another licensed entity signed a lease to conduct gaming from August 1, 2003 to August 4, 2003. (State's Exhibit D).
- 7) In August of 2003 the calendar week at issue began on Sunday the 3rd and ended on Saturday the 9th.
- 8) On January 5, 2004, the Petitioner's charity gaming license was suspended for two (2) years, and Petitioner was assessed civil penalties in the amount of seven thousand dollars (\$7,000).

STATEMENT OF LAW

- 1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings.
- 2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
- 3) IC 4-21.5-3-25(b) provides in pertinent part, "The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts..."
- 4) IC 4-21.5-2-26(a) states, "The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exemption to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence."
- 5) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).
- 6) "It is reasonable...to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).
- 7) 45 IAC 18-1-27 states, " 'Location' means the street address and mailing address. It cannot include a post office box and is not connected by a common roof or wall with another structure where gaming activities occur."
- 8) 45 IAC 18-1-30 provides, " 'Operator' means a member of a qualified organization who is:
 - (1) an Indiana resident;
 - (2) in good standing with the department; and

- (3) in addition to the forgoing [sic., foregoing], the following individuals are also operators
- (A) A bartender licensed with the alcohol and tobacco commission if the bartender sell only pull-tabs, tip boards, or punchboards.
 - (B) Any person who accounts for money received at the charity gaming event.
 - (C) Any person who keeps records of the charity gaming event.
 - (D) Any person who announces the letter-number combination at a bingo event.
- 9) 45 IAC 18-3-2(D) states, “Only one (1) organization can conduct an event on the same day at the same location. An organization is limited to three (3) allowable events in a calendar week. An organization cannot lease its premises to another qualified organization if this would result in more than three (3) events being held on such premises during a calendar week. Unless otherwise authorized by the department, and organization is limited to one (1) allowable event each day...”
- 10) IC 4-32-9-4 states, “(a) Each organization applying for a bingo license, special bingo license, charity game night license, raffle license, door prize drawing license, or festival license must submit to the department a written application on a form prescribed by the department.
- (b) The application must include the information that the department requires, including the following:**
- (1) The name and address of the organization.
 - (2) The names and addresses of the officers of the organization.
 - (3) The type of event the organization proposes to conduct.
 - (4) The location at which the organization will conduct the bingo event, charity game night, raffle event, door prize event, or festival.
 - (5) The dates and times for the proposed bingo event or events, charity game night, raffle event, door prize event, or festival.
 - (6) Sufficient facts relating to the organization or the organization's incorporation or founding to enable the department to determine whether the organization is a qualified organization.
- (7) The name of each proposed operator and sufficient facts relating to the proposed operator to enable the department to determine whether the proposed operator is qualified to serve as an operator.**
- (8) A sworn statement signed by the presiding officer and secretary of the organization attesting to the eligibility of the organization for a license, including the nonprofit character of the organization.
 - (9) Any other information considered necessary by the department. (Emphasis added).
- 11) IC 4-32-9-20(b) states, “A facility may not be rented for more than three (3) days during a calendar week for an allowable event.”

- 12) IC 4-32-9-28 provides, “An operator must be a member in good standing of the qualified organization that is conducting the allowable event for at least one (1) year at the time of the allowable event.
- 13) IC 4-32-9-34 states, “(a) Except as provided in subsection (b), the following persons may not play or participate in any manner in an allowable event:
 - (1) An employee of the department.
 - (2) A person less than eighteen (18) years of age.

(b) A person less than eighteen (18) years of age may sell tickets or chances for a raffle.” (Emphasis added).
- 14) IC 4-32-7-4 provides, “The department has the sole authority to license entities under this article to sell, distribute, or manufacture the following:
 - (1) Bingo cards.
 - (2) Bingo boards.
 - (3) Bingo sheets.
 - (4) Bingo pads.
 - (5) Any other supplies, devices, or equipment designed to be used in playing bingo designated by rule of the department.
 - (6) Pull tabs.
 - (7) Punchboards.
 - (8) Tip boards.

(b) Qualified organizations must obtain the materials described in subsection (a) only from an entity licensed by the department.

(c) The department may not limit the number of qualified entities licensed under subsection (a).
- 15) IC 4-32-9-4 states, “(a) Each organization applying for a bingo license, special bingo license, charity game night license, raffle license, door prize drawing license, or festival license must submit to the department a written application on a form prescribed by the department.
 - (b) The application must include the information that the department requires, including the following:
 - (1) The name and address of the organization.
 - (2) The names and addresses of the officers of the organization.
 - (3) The type of event the organization proposes to conduct.
 - (4) The location at which the organization will conduct the bingo event, charity game night, raffle event, door prize event, or festival.
 - (5) The dates and times for the proposed bingo event or events, charity game night, raffle event, door prize event, or festival.
 - (6) Sufficient facts relating to the organization or the organization's incorporation or founding to enable the department to determine whether the organization is a qualified organization.
 - (7) The name of each proposed operator and sufficient facts relating to the proposed operator to enable the department to determine whether the proposed operator is qualified to serve as an operator.
 - (8) A sworn statement signed by the presiding officer and secretary of the organization attesting to the eligibility of the organization for a

license, including the nonprofit character of the organization.

(9) Any other information considered necessary by the department.”

- 16) IC 4-32-12-1(a) provides in pertinent part, “The Department may suspend... an individual ...for any of the following: (1) Violation of a provision of this article or of a rule of the department...”
- 17) IC 4-32-12-3 states, In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:
 - (1) Suspend or revoke the license.
 - (2) Lengthen a period of suspension of the license.
 - (3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.
 - (4) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day the civil penalty goes unpaid.

CONCLUSIONS OF LAW

- 1) A common misconception is that the conduct of gaming by an exempt organization is a charitable activity. There is nothing inherently charitable about gaming. The conduct of gaming is no different than any other trade or business carried on for profit. The fact that an organization may use the proceeds from its gaming to pay for the expenses associated with the conduct of its charitable programs will not make the gaming a charitable activity.
- 2) The Petitioner allowed minors to participate in its charity gaming activities in violation of IC 4-32-9-34.
- 3) Petitioner allowed an individual identified on their license as a worker to call bingo, a violation of 45 IAC 18-1-30(3)(D).
- 4) Petitioner allowed Glenda Holloway to act as an operator without having been a member of Petitioner’s organization for the requisite amount of time a violation of IC 4-32-9-28.
- 5) Petitioner signed a lease agreement with the Lake County Board of Commissioners to conduct charity gaming from August 7 to August 9, 2003 at the Lake County Fairground. Another organization had also signed a lease to conduct charity gaming from August 1, 2003 to August 4, 2003. Therefore, starting the week of August 3rd 2003, charity gaming was to be conducted at the Lake County Fairgrounds on five (5) days that week, a violation of IC 4-32-9-20(b).

PROPOSED DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner’s appeal is denied in whole.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____
Bruce R. Kolb / Administrative Law Judge